

AMENDED IN ASSEMBLY MAY 1, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1273

Introduced by Assembly Member Nakanishi

February 21, 2003

An act to amend ~~Section 1050~~ *Sections 1050 and 1050.5* of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1273, as amended, Nakanishi. Criminal procedure.

Under existing law, to continue a hearing in a criminal proceeding specified procedures must be followed. Existing law requires the court in felony cases to set a trial date within 60 days of the defendant's arraignment in superior court except upon a showing of good cause, and prohibits a court from granting a continuance in a criminal proceeding absent a showing of good cause. This law does not provide explicit authority to the court to dismiss a case that is not timely set. However, another provision of existing law requires a court, in the absence of good cause for the delay, to dismiss a criminal action when a defendant is not brought to trial in a superior court within specified periods. ~~In particular, absent good cause, a court must dismiss a case not brought to trial within 60 days of the defendant's arraignment in superior court, or not brought to trial within 10 days of a trial date set after more than 60 days after the arraignment for good cause, or with agreement of the defendant. The provision requiring dismissal does not provide a sanction for a case that is set for trial on a date less than 60 days from the defendant's arraignment in superior court, and is continued to another date within that 60 days, or for a case that is continued for less~~

~~than 10 days from a date beyond that 60 days set pursuant to a defendant's waiver or for good cause.~~

~~This bill would specify that, for purposes of the law requiring a finding of good cause to continue any criminal hearing, the good cause requirement shall not apply to a prosecution or defense motion to continue a felony trial to a date not more than 60 days from the date of the defendant's arraignment on the information, or to a date not more than 10 days after a trial date set more than 60 days after that arraignment, as permitted with a defendant's consent or a prior finding of good cause. Thus, a court would not be required to find good cause to continue one of these cases unless it would be required to dismiss the case for delay absent that finding. This bill would state that this exception to the requirement of a finding of good cause is intended to codify existing case law state that provisions specifying the procedures to continue a hearing in a criminal proceeding are directory only and do not mandate dismissal of an action. This bill would also provide that a court or magistrate shall not dismiss a case if a party fails to comply with these procedures.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1050 of the Penal Code is amended to
2 read:
3 1050. (a) The welfare of the people of the State of California
4 requires that all proceedings in criminal cases shall be set for trial
5 and heard and determined at the earliest possible time. To this end,
6 the Legislature finds that the criminal courts are becoming
7 increasingly congested with resulting adverse consequences to the
8 welfare of the people and the defendant. Excessive continuances
9 contribute substantially to this congestion and cause substantial
10 hardship to victims and other witnesses. Continuances also lead to
11 longer periods of presentence confinement for those defendants in
12 custody and the concomitant overcrowding and increased
13 expenses of local jails. It is therefore recognized that the people,
14 the defendant, and the victims and other witnesses have the right
15 to an expeditious disposition, and to that end it shall be the duty of
16 all courts and judicial officers and of all counsel, both for the
17 prosecution and the defense, to expedite these proceedings to the



1 greatest degree that is consistent with the ends of justice. In
2 accordance with this policy, criminal cases shall be given
3 precedence over, and set for trial and heard without regard to the
4 pendency of, any civil matters or proceedings. In further
5 accordance with this policy, death penalty cases in which both the
6 prosecution and the defense have informed the court that they are
7 prepared to proceed to trial shall be given precedence over, and set
8 for trial and heard without regard to the pendency of, other
9 criminal cases and any civil matters or proceedings, unless the
10 court finds in the interest of justice that it is not appropriate.

11 (b) To continue any hearing in a criminal proceeding, including
12 the trial, (1) a written notice shall be filed and served on all parties
13 to the proceeding at least two court days before the hearing sought
14 to be continued, together with affidavits or declarations detailing
15 specific facts showing that a continuance is necessary and (2)
16 within two court days of learning that he or she has a conflict in the
17 scheduling of any court hearing, including a trial, an attorney shall
18 notify the calendar clerk of each court involved, in writing,
19 indicating which hearing was set first. A party shall not be deemed
20 to have been served within the meaning of this section until that
21 party actually has received a copy of the documents to be served,
22 unless the party, after receiving actual notice of the request for
23 continuance, waives the right to have the documents served in a
24 timely manner. Regardless of the proponent of the motion, the
25 prosecuting attorney shall notify the people's witnesses and the
26 defense attorney shall notify the defense's witnesses of the notice
27 of motion, the date of the hearing, and the witnesses' right to be
28 heard by the court.

29 (c) Notwithstanding subdivision (b), a party may make a
30 motion for a continuance without complying with the
31 requirements of that subdivision. However, unless the moving
32 party shows good cause for the failure to comply with those
33 requirements, the court may impose sanctions as provided in
34 Section 1050.5.

35 (d) When a party makes a motion for a continuance without
36 complying with the requirements of subdivision (b), the court shall
37 hold a hearing on whether there is good cause for the failure to
38 comply with those requirements. At the conclusion of the hearing,
39 the court shall make a finding whether good cause has been shown
40 and, if it finds that there is good cause, shall state on the record the

1 facts proved that justify its finding. A statement of the finding and
2 a statement of facts proved shall be entered in the minutes. If the
3 moving party is unable to show good cause for the failure to give
4 notice, the motion for continuance shall not be granted.

5 ~~(e) (1) Except as provided in this subdivision, continuances~~

6 *(e) Continuances* shall be granted only upon a showing of good
7 cause. Neither the convenience of the parties nor a stipulation of
8 the parties is in and of itself good cause.

9 ~~(2) The good cause requirement shall not apply to a prosecution~~
10 ~~or defense motion to continue a felony trial to a date not more than~~
11 ~~60 days from the date of the defendant's arraignment on the~~
12 ~~information, or to a date not more than 10 days from a trial date~~
13 ~~set following the defendant's waiver pursuant to subparagraph (B)~~
14 ~~of paragraph (2) of subdivision (a) of Section 1382. This exception~~
15 ~~to the requirement of a finding of good cause is intended to codify~~
16 ~~existing case law.~~

17 (f) At the conclusion of the motion for continuance, the court
18 shall make a finding whether good cause has been shown and, if
19 it finds that there is good cause, shall state on the record the facts
20 proved that justify its finding. A statement of facts proved shall be
21 entered in the minutes.

22 (g) (1) When deciding whether or not good cause for a
23 continuance has been shown, the court shall consider the general
24 convenience and prior commitments of all witnesses, including
25 peace officers. Both the general convenience and prior
26 commitments of each witness also shall be considered in selecting
27 a continuance date if the motion is granted. The facts as to
28 inconvenience or prior commitments may be offered by the
29 witness or by a party to the case.

30 (2) For purposes of this section, "good cause" includes, but is
31 not limited to, those cases involving murder, as defined in
32 subdivision (a) of Section 187, allegations that stalking, as defined
33 in Section 646.9, a violation of one or more of the sections
34 specified in subdivision (a) of Section 11165.1 or Section 11165.6,
35 or domestic violence as defined in Section 13700, or a case being
36 handled in the Career Criminal Prosecution Program pursuant to
37 Sections 999b through 999h, or a hate crime, as defined in Title
38 11.6 (commencing with Section 422.6) of Part 1, has occurred and
39 the prosecuting attorney assigned to the case has another trial,
40 preliminary hearing, or motion to suppress in progress in that court

1 or another court. A continuance under this paragraph shall be
2 limited to a maximum of 10 additional court days.

3 (3) Only one continuance per case may be granted to the people
4 under this subdivision for cases involving stalking, hate crimes, or
5 cases handled under the Career Criminal Prosecution Program.
6 Any continuance granted to the people in a case involving stalking
7 or handled under the Career Criminal Prosecution Program shall
8 be for the shortest time possible, not to exceed 10 court days.

9 (h) Upon a showing that the attorney of record at the time of the
10 defendant's first appearance in the superior court on an indictment
11 or information is a Member of the Legislature of this state and that
12 the Legislature is in session or that a legislative interim committee
13 of which the attorney is a duly appointed member is meeting or is
14 to meet within the next seven days, the defendant shall be entitled
15 to a reasonable continuance not to exceed 30 days.

16 (i) A continuance shall be granted only for that period of time
17 shown to be necessary by the evidence considered at the hearing
18 on the motion. Whenever any continuance is granted, the court
19 shall state on the record the facts proved that justify the length of
20 the continuance, and those facts shall be entered in the minutes.

21 (j) Whenever it shall appear that any court may be required,
22 because of the condition of its calendar, to dismiss an action
23 pursuant to Section 1382, the court must immediately notify the
24 Chair of the Judicial Council.

25 (k) This section shall not apply when the preliminary
26 examination is set on a date less than 10 court days from the date
27 of the defendant's arraignment on the complaint, and the
28 prosecution or the defendant moves to continue the preliminary
29 examination to a date not more than 10 court days from the date
30 of the defendant's arraignment on the complaint.

31 *(l) This section is directory only and does not mandate*
32 *dismissal of an action by its terms.*

33 *SEC. 2. Section 1050.5 of the Penal Code is amended to read:*

34 1050.5. (a) When, pursuant to subdivision (c) of Section
35 1050, the court imposes sanctions for failure to comply with the
36 provisions of subdivision (b) of Section 1050, the court may
37 impose one or both of the following sanctions when the moving
38 party is the prosecuting or defense attorney:

39 (1) A fine not exceeding one thousand dollars (\$1,000) upon
40 counsel for the moving party.

- 1 (2) The filing of a report with an appropriate disciplinary
2 committee.
- 3 (b) The authority to impose sanctions provided for by this
4 section shall be in addition to any other authority or power
5 available to the court, *except that the court or magistrate shall not*
6 *dismiss the case.*

